IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3141 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GSRTC

Versus

EHSANULAHKHAN S PATHAN

Appearance:

1. Special Civil Application No. 3141 of 1999

MR NAVIN K PAHWA for Petitioner No. 1

MR RAMNANDAN SINGH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 02/04/2002

ORAL JUDGEMENT

Heard Ms.Sangeeta Pahwa, learned advocate for petitioner and Mr.R.N.Singh, learned advocate for respondent workman.

The petitioner Corporation has challenged the

award passed by the Industrial Tribunal in Reference No.149 / 1994 dated 2nd November, 1998, wherein the Industrial Tribunal has set aside the order dated 13th March, 1996 passed by the Corporation and also set aside the order No.365 / 1994 and directed the Corporation to grant all the benefits of the post from which the respondent reverted. It is also directed to the Corporation to refix the salary of the respondent workman in the category of Art-B Mechanic. This Court has issued RULE on 9th September, 1999 and granted interim relief in terms of para-8[B]. Affidavit-in-reply has been filed by the respondent.

Learned advocate Ms.Sangeeta Pahwa has submitted that initially the respondent workman was promoted as Ad-hoc with effect from 1st November, 1990 by order dated 22nd November, 1990 on the post of Art - B Carpenter. That the promotion given to the respondent workman was temporary and adhoc promotion given to the respondent workman and thereafter by order dated 17th March, 1994 the respondent workman reverted to the original post in Helper at Baroda. She has also submitted that the respondent workman has challenged the reversion order before the Industrial Tribunal but considering the dispute which was referred for adjudication to the tribunal which is at pg.21, wherefrom it reflects that Reference has been made to the effect that reversion order has been passed by the petitioner Corporation in respect of Chargesheet No.21 / 1994 that requires to be set aside and the respondent workman is entitled to post of Art-B and loss of seniority and promotion caused to the respondent workman.

I have perused the entire award passed by the tribunal. The order of reversion which has been passed by the petitioner Corporation is not based on any misconduct or allegations or any result of the departmental inquiry. It was not punishment order at all , but in fact, it was simply reversion given to the respondent workman when he was given promotion on adhoc and temporary basis. Therefore, there was no connection with chargesheet No.21 / 1994 because the case of the petitioner Corporation is that the respondent workman was not reverted as a result of departmental inquiry based on chargesheet No.21 / 1994. This aspect has been made clear by the witness of the petitioner Corporation - Shri More, who in terms had deposed that the respondent workman has not been reverted by way of punishment. Therefore, considering this fact, according to my opinion, the respondent workman has not been reverted by way of punishment but it was simple reversion on the

basis of the adhoc promotion granted in favour of the respondent workman after some period, reversion order came to be passed. However, the reversion order has not been challenged by the respondent workman before the tribunal but on the contrary, the challenge before the tribunal as if the reversion order is a result of punishment. Therefore, the tribunal has considered the entire matter as if the reversion order has been passed by way of punishment and hence, this is clear error committed by the tribunal. When it was specific case of the petitioner Corporation that this is not reversion by way of punishment and therefore, according to my opinion, the tribunal has decided the matter beyond the scope of terms of the Reference and for that, the tribunal is not having jurisdiction to examine the matter under Section 10[4] of the I.D.Act. In above view of the matter, the tribunal has committed gross error in deciding the matter and while passing such award which is apparently beyond the scope of terms of reference which has been referred for adjudication to the tribunal. Therefore, this award is required to be quashed and set aside. Accordingly, present petition is allowed. The award passed by the Industrial Tribunal in Reference No.149 / 1994 dated 2nd November, 1998 is hereby quashed and set aside. However, it is made clear that the award under challenge is set aside by this Court only on the jurisdiction aspect only but this Court has not examined the merits of the matter.

Learned advocate Mr.R.N.Singh appearing on behalf of the respondent workman submits that the reversion order which has not been challenged by the respondent workman before the tribunal dated 17th March, 1994 as there seems some mistake in raising the dispute by the Union. Therefore, Mr.Singh submits that the respondent workman may be granted liberty to raise the industrial disputes in respect of reversion order dated 17th March, 1994 relying upon GSO 937 / 1990. However, learned advocate Ms.Snageeta Pahwa submits that even otherwise it is open to the respondent workman to raise industrial dispute under the machinery of the I.D.Act if that dispute was not raised earlier by the respondent workman.

Considering submissions made by learned advocates for the parties, this Court observe that if the respondent workman has not raise the industrial dispute aginst the reversion order dated 17th March, 1994, it is open to the respondent workman to raise such industrial dispute within some reasonable time. As and when such industrial dispute is raised by the respondent workman, concerned authority will examine the dispute and to pass appropriate orders of making the Reference before the

concerned authority in accordance with law and the concerned authority will take four months from the date of raising the dispute by the respondent workman.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted to respondent workman.

Date : 2-4-2002 [H. K. Rathod, J.]

#kailash#